

1 with my ruling to the effect that, that we'll not be concerned
2 with trying to find a violation of the Commission's EEO rules
3 --

4 MR. BERFIELD: I understand.

5 JUDGE LUTON: -- on the basis of this conduct. My
6 interest at present is in coming to some determination about
7 whether this Randolph material ought to be dealt with in this
8 case at all for any purpose other than finding a violation.
9 The renewal expectancy, I guess, is what really concerned me.
10 Does it --

11 MR. KRAUS: Your Honor?

12 JUDGE LUTON: -- affect renewal expectancy at all or
13 is it quite irrelevant to it? Yes, Mr. Kraus?

14 MR. KRAUS: If you were to -- I understand that
15 you're reserving your ruling, but I'd like to point out that
16 if you were to accept the Liz Randolph conduct for any
17 purpose, presumably Mr. Berfield would withdraw his appeal. I
18 mean, that's just -- the practical impact of, of your ruling
19 as I understand it would be to cause him to withdraw his
20 appeal which is designed to test the Commission's prior
21 judgment and I just point that out. I don't see what purpose
22 would be served by continuing an appeal if he has the right to
23 put that stuff in anyway.

24 MR. BERFIELD: Do you wish me to respond to that,
25 Your Honor, or is that necessary?

1 JUDGE LUTON: Go ahead. You can respond --

2 MR. BERFIELD: Well --

3 JUDGE LUTON: -- if you would.

4 MR. BERFIELD: -- obviously the appeal is predicated
5 on an absolute disqualifying basis. We're in a totally
6 different context here so I don't think one has to do with the
7 other. I'd be perfectly happy just given a reasonable period
8 of time to submit something and obviously the other parties
9 could respond.

10 JUDGE LUTON: Well, yeah, I do think that I'm going
11 to need some help here, some persuasion and, again, not on the
12 question of whether or not we can try the conduct seeking to
13 find an EEO violation. I'm satisfied. The answer to that is
14 no.

15 MR. BERFIELD: I understand.

16 JUDGE LUTON: But does it have anything to do with
17 renewal expectancy? That's what I want to know?

18 MR. BERFIELD: And that's -- that would be the point
19 of the, of the pleading.

20 JUDGE LUTON: Now, you're going to find something
21 there. Mr. Kraus is satisfied that if he can't find a
22 violation, then the conduct isn't relevant for any purpose.
23 Is that right essentially?

24 MR. KRAUS: Yes, but not just the EEO comments, the
25 allegations before the Commission related to news distortion,

1 related to, related to decency. I mean, there were -- it was
2 not just this limited --

3 JUDGE LUTON: Rule violations I suspect, rule
4 violations.

5 MR. KRAUS: Allegheny did a very competent, thorough
6 job of trying to raise issues --

7 JUDGE LUTON: That's what I meant to say. I didn't
8 --

9 MR. KRAUS: -- in the first place.

10 JUDGE LUTON: Well, I stand corrected. It's more
11 than just EEO violations, rule violations, what the Commission
12 concerned itself with, I think.

13 MR. KRAUS: Right.

14 JUDGE LUTON: Mr. Zauner?

15 MR. ZAUNER: Oh, I was just going to say that in the
16 Metroflex decision by the Review Board that the Review Board
17 identified five criteria that they would use in evaluating a
18 station's meritorious service record, and I think we're all
19 familiar with those criteria and I'll just say that none of --
20 this Liz Randolph matter doesn't seem to fit into any of them,
21 in my opinion.

22 JUDGE LUTON: All right.

23 MR. BERFIELD: Well, we'll address that in our
24 brief, too, Your Honor.

25 JUDGE LUTON: Okay. I think so far, Mr. Berfield,

1 | you're losing. You're going to have to --

2 | MR. BERFIELD: Well, we stay have -- at least we
3 | still have a time at bat, do we not?

4 | JUDGE LUTON: Yes, you do.

5 | MR. BERFIELD: Okay.

6 | JUDGE LUTON: Yes, you do.

7 | MR. KRAUS: May I suggest, Your Honor, that we need
8 | to consider this matter on an accelerated basis with the -- in
9 | view of the hearing schedule?

10 | JUDGE LUTON: I agree. That's right.

11 | MR. BERFIELD: I agree. And I must say that I think
12 | that also the importance of this kind of cuts across many of
13 | these other exhibits. I would be -- in other words, I'd be
14 | willing to do a circumstance where we had a -- if we could
15 | have until -- what's today? Today is Wednesday. If, if we
16 | could have until Friday to submit something and they submit
17 | something early part of the week and then have another hearing
18 | session next week to receive your ruling and go through the
19 | remainder because I think -- they may not agree, but I think
20 | to some degree the ruling on that would determine the ruling
21 | on a number of these other exhibits?

22 | MR. MILLER: Well, Your Honor, I have -- I presently
23 | am participating in an oral argument at the Court of Appeals
24 | on Friday and another one on a different case at the Court of
25 | Appeals on Monday and to receive something on Friday would --

1 in anticipation that we respond to it on, on Tuesday is -- it
2 ain't going to be easy. These are matters that were -- come
3 up at the admissions session.

4 MR. KRAUS: And we've got witness notification on
5 Friday.

6 MR. MILLER: Yeah.

7 MR. BERFIELD: Well, we can, we can go ahead. We
8 can make our witness come -- on our side we can make the
9 witness notification independent of the ruling and on their
10 side they can make it subject to. I'll live with whatever
11 briefing schedule is, is satisfactory.

12 MR. MILLER: Your Honor, today is Wednesday. If we
13 could get something by tomorrow, that would seem more
14 reasonable to give Allegheny until close of business on Friday
15 and expect us to come with a, with a comprehensive response
16 over the weekend with -- on something that should have been
17 capable of full ventilation today doesn't strike me as very
18 good --

19 JUDGE LUTON: I'm not going to blame Mr. Berfield
20 for my request.

21 MR. BERFIELD: Well, Your Honor, if we were to I
22 guess adjourned now while we -- and I would have the rest of
23 today, I, I think I can get -- I would undertake that as
24 something to them by the close of business tomorrow, Thursday.
25 I realize the need to move it along. And then I would suggest

1 whatever they --

2 JUDGE LUTON: Would that be all right, Mr. Miller?

3 MR. MILLER: When would we --

4 JUDGE LUTON: Tomorrow and I'd need a response from
5 you -- we've got witness notification on Friday?

6 MR. MILLER: Yes, Your Honor. Would we then
7 reconvene to, to deal with the remaining Allegheny exhibits?

8 JUDGE LUTON: Looks like we'd have to.

9 MR. BERFIELD: Well, as far as the witness
10 notification is concerned, I wonder if we might -- we might do
11 it this way. They only have three principle witnesses -- I
12 mean, three licensee witnesses, Mr. Kellar, Mr. Box and Mr.
13 Meyer. We're going to call all three of them. We only have
14 two principle witnesses ourselves, Mr. Long, Jr. and Mr. Long,
15 III, and I assume they want to call them and if we were, if we
16 were to agree on those witnesses -- it seems to me the public
17 witnesses are not scheduled way until November, I think. We
18 could have a, you know, a delay on notification of the public
19 witnesses until after the session next week.

20 MR. KRAUS: I just really feel compelled to point out
21 once again, and I'm not trying to use this as a -- as an
22 impromptu argument, but if we are going to get into the
23 morass, and I use the word -- of any aspect of the Liz
24 Randolph matter, that raises a whole host of problems
25 including witnesses, new witnesses, new, new issues, new

1 matters which have to be considered by Your Honor. I mean, I
2 think that we would very likely try at least to, to appeal any
3 ruling, although I'm not sure we'd be successful on this point
4 because of the complexity involved in it, and I just emphasize
5 that with this hearing schedule we have that to delay a ruling
6 or to attempt now to revisit this already settled matter,
7 which is really what I think it is, is really not conducive to
8 following the schedule which we currently have. I think we
9 need to look at changing the whole schedule if we're going to
10 do that.

11 JUDGE LUTON: Well, that would be okay with me. My
12 primary interest is in making a ruling that I feel is a
13 correct one and one that is made according to the best of my
14 ability and I'm, again, not going to be persuaded by the
15 possibility that a can of worms may be opened. That, in my
16 judgment, is a poor basis for making a ruling and I don't
17 really think you expect me to make one on that basis, now do
18 you?

19 MR. KRAUS: No, I don't, Your Honor. I just wanted
20 to point out that it changes the whole nature of the hearing.

21 JUDGE LUTON: Sure does, but we set a schedule once.
22 We can set it again if need be. I don't want to do it, but if
23 it has to be done it will be done. I need the parties'
24 assistance here and I'm not shy about asking for it, and I do
25 ask for it and I ask them to do the best that they can. Mr.

1 Berfield, you indicated that you could have something
2 distributed presumably to the other side by tomorrow evening
3 --

4 MR. BERFIELD: Yes, Your Honor.

5 JUDGE LUTON: -- or tomorrow perhaps? And the
6 response, how long -- I guess you can't know how long it will
7 take to make a response until you've seen what comes in, but I
8 have to give you a certain time within which to make a
9 response. Can you make your response a day later? He's
10 making his argument in a day. Can you respond in a day?

11 MR. MILLER: Well, Your Honor, if I didn't have to
12 be up at the Court of Appeals --

13 JUDGE LUTON: I'm sorry. You do have the Court of
14 Appeals.

15 MR. MILLER: -- on Monday, I could do it more
16 easily.

17 JUDGE LUTON: What about co-counsel? He'll help you
18 out, I'm sure.

19 MR. KRAUS: Well, of course, we can. We can meet a
20 schedule of Friday or Monday.

21 MR. MILLER: Well, Friday. We'll try to meet
22 Friday?

23 MR. KRAUS: Or Monday, Your Honor. Maybe Monday
24 would be better. It would give us at least -- he's going to
25 have day-and-a-half. That would give us -- we haven't seen

1 what his argument -- I mean, I think I know what his argument
2 is, but I haven't seen it yet, so it's a little hard --

3 JUDGE LUTON: I understand that. Right. And I'm
4 asking for authority, not just more of the same that we're
5 gotten here today.

6 MR. BERFIELD: I understand.

7 JUDGE LUTON: I'm asking you to try to find some
8 authority.

9 MR. KRAUS: I think it would be difficult to say
10 that we could do that in, in one day.

11 JUDGE LUTON: You can't do that?

12 MR. KRAUS: I think it would be tough.

13 JUDGE LUTON: All right. Then you'll need the
14 weekend?

15 MR. KRAUS: I think so.

16 JUDGE LUTON: All right. Then take the weekend.
17 What do we do about witnesses? In the meantime call all of
18 the witness that you think you're going to need, just name
19 them anyway, and when I rule the witness statements will be
20 adjusted accordingly.

21 MR. BERFIELD: Yes, Your Honor.

22 MR. KRAUS: Now we'll need another date for the
23 resumption of this --

24 JUDGE LUTON: I think we're going to need to get
25 back together again and talk about this and see --

1 MR. ZAUNER: On witness notification should we
2 assume then that, that the Liz Randolph material is coming in
3 and notify for cross those people who might be associated with
4 that.

5 JUDGE LUTON: Yeah. Not notify the people, just
6 state the names.

7 MR. ZAUNER: Well, no, just state the names of
8 anybody assuming that that information's coming in?

9 JUDGE LUTON: That's right.

10 MR. MILLER: Your Honor?

11 JUDGE LUTON: Yes, sir.

12 MR. MILLER: Can we defer that aspect of witness
13 notification as I think Mr. Berfield suggested pending your
14 ruling on this matter?

15 JUDGE LUTON: Sure. Absolutely.

16 MR. KRAUS: Let's look at the problem here. We have
17 -- I mean, presumably he wants to argue that the arbitrator's
18 ruling is, is good for some purpose, which I guess he does.
19 We've got to figure out some way -- I don't know whether we
20 can get the arbitrator here to talk about his ruling. I don't
21 think so. I don't know whether we can get the people who the
22 arbitrator heard which are Liz Randolph and Tex Meyer and
23 other people at the station. I don't know what we'd do there
24 to go behind that and explain the ruling.

25 JUDGE LUTON: Well --

1 MR. MILLER: I have a slight different problem.
2 Exhibit 6 consists of a bunch of letters, many of which
3 express displeasure at the way the station's --

4 JUDGE LUTON: Okay. I think the way this is coming
5 out is that you're in no position now to --

6 MR. MILLER: Exactly.

7 JUDGE LUTON: -- determine which witnesses you're
8 going to call or not.

9 MR. BERFIELD: I have no problem with that. I have
10 no problem. As I said, the public witnesses aren't due until
11 November anyway, so I have no problem on that. The principle
12 witnesses, I'll give notification right now that we're
13 requesting the three principles.

14 JUDGE LUTON: But that's just from your side --

15 MR. BERFIELD: Yeah.

16 JUDGE LUTON: -- and here you can't help them out.
17 You don't know. They're going to need --

18 MR. MILLER: We want their two people.

19 MR. BERFIELD: Sure.

20 MR. MILLER: And we want their two people, Your
21 Honor, so that's it. That piece of it's been taken care of.

22 MR. ZAUNER: The rest of it then is just the public
23 witnesses.

24 MR. MILLER: And the rest, I think, depend -- with
25 the exception of our public witnesses, I think depend upon

1 your, your resolution of this.

2 JUDGE LUTON: Well, you started out to say that you
3 couldn't determine who you would call.

4 MR. MILLER: Not with respect to the Liz Randolph
5 issue.

6 JUDGE LUTON: Of course.

7 MR. MILLER: Whether we wanted to get one of these
8 people who wants to express displeasure with the sexual
9 content and innuendo of the Liz Randolph stuff, whether we
10 want separation or not I guess is going to -- for whatever --
11 if anything we can add to this, more or less.

12 MR. ZAUNER: And this is all just going to the EEO
13 question. Well, what's it -- I'm just confused as to what
14 it's going to. I mean, are we going to have witnesses coming
15 in who are going to testify that they don't like the rock and
16 roll that's being broadcast on this station?

17 JUDGE LUTON: God, I hope not.

18 MR. ZAUNER: Where does this thing begin and end and
19 what is it that it's supposed to be relevant to?

20 MR. KRAUS: No. I think one of our witnesses
21 testifies that they don't like the jokes.

22 MR. MILLER: One of the letters complains not only
23 about our programming, but about syndicated television
24 programming. They don't like --

25 JUDGE LUTON: I know. That's stuff that we haven't

1 talked about today. We haven't gotten to those individual
2 letters --

3 MR. MILLER: Exactly.

4 JUDGE LUTON: -- but I realize it's all out there
5 and your question, where does all that lead, I don't know. We
6 haven't gotten to look at it. It doesn't lead anywhere at the
7 present time.

8 MR. ZAUNER: Are we dealing only with what -- I'm
9 just lost as to what we're supposed to do this memo on.

10 JUDGE LUTON: 3 and 4.

11 MR. BERFIELD: Well, I would assume that what
12 they're suggesting is obviously the ruling on this cuts across
13 a lot of the other exhibits and --

14 JUDGE LUTON: What do you mean, cuts across?

15 MR. BERFIELD: Well, I mean -- well, to the extent
16 that we get into the Liz -- to the extent that the Liz
17 Randolph matter is reflected in a letter or something,
18 obviously it's going to be governed by this.

19 JUDGE LUTON: Not necessarily. I don't think so. I
20 think some of the letters are just -- really even if the
21 Randolph matter was -- somehow it come in, some of the letters
22 don't add anything even though they mention the Randolph
23 matter. They show certain persons, people upset with the
24 jokes and the programs and stuff, but I'm not sure that that's
25 useful for anything in this proceeding.

1 MR. BERFIELD: I understand. I understand.

2 JUDGE LUTON: So to say that it --

3 MR. BERFIELD: I have -- well, I didn't --

4 JUDGE LUTON: One depends on the other, right? That
5 ain't necessarily so.

6 MR. BERFIELD: Well, Your Honor, we'll be prepared
7 to submit our brief by the close of business and we've each
8 given each other witness notification on the principles. I
9 assume we're deferring on other witness notification. We just
10 need a date to come back before you next week.

11 JUDGE LUTON: All right. And --

12 MR. KRAUS: And there will be hand delivery
13 presumably?

14 MR. BERFIELD: Yes, yes.

15 JUDGE LUTON: I hope so.

16 MR. BERFIELD: Certainly so.

17 JUDGE LUTON: And I'm not going to need more than a
18 day. I won't even need a full day to make a ruling on this.
19 Now, when is it? Friday is when the --

20 MR. MILLER: Your Honor, can we say --

21 JUDGE LUTON: Close of -- or did you say Monday?

22 MR. BERFIELD: They wanted Monday.

23 MR. MILLER: We will try real hard to get it to you
24 Friday.

25 JUDGE LUTON: Monday will be okay. You've got that

1 Court of Appeals thing.

2 MR. MILLER: Well, if we can we'll get it to you on
3 Friday.

4 JUDGE LUTON: Okay. If you can.

5 MR. ZAUNER: The Bureau would comment, too, Your
6 Honor.

7 JUDGE LUTON: Okay. Monday -- the Bureau's going to
8 want to see what, both sides? Yeah, I suppose.

9 MR. ZAUNER: I don't think that will be necessary.

10 JUDGE LUTON: Okay. You've got your position pretty
11 well thought through. Okay. That's fine. If I get something
12 Monday I'll rule Tuesday and we'll come back here on Wednesday
13 and a whole week would have gone by. I'm just trying to think
14 if there's some way that we won't need to meet again. I can
15 just write a paper.

16 MR. MILLER: Your Honor, there are seven exhibits
17 here that deal with Liz Randolph. There are some that deal
18 with --

19 JUDGE LUTON: Some do not.

20 MR. MILLER: -- other things.

21 JUDGE LUTON: That's right.

22 MR. MILLER: There's the -- complaint in page 3 of
23 Exhibit 5, that sort of thing. If you want, maybe we should
24 resolve those now.

25 JUDGE LUTON: I agree we should do that now.

1 MR. BERFIELD: Well, Your Honor, I think we will
2 need another session to go through our -- you know, based on
3 your ruling, our -- if you wish to hand the ruling down from
4 the bench, that would be fine with us. I don't know that we
5 need a written ruling.

6 MR. KRAUS: Yeah. We could save a day if you wanted
7 to rule on it Tuesday and just be here.

8 MR. MILLER: Just rule from the bench and then we go
9 and thrash through all the rest of the exhibits.

10 JUDGE LUTON: Say that again for me now. If I were
11 to do what?

12 MR. KRAUS: If you want to save a day you don't need
13 to make a written ruling, just make an oral ruling on Tuesday
14 at a session we have then.

15 JUDGE LUTON: At a session we have on Tuesday?

16 MR. KRAUS: Sure.

17 JUDGE LUTON: Okay.

18 MR. MILLER: And just include all the rest of the
19 exhibits.

20 MR. KRAUS: Subject to the convenience of other
21 counsel.

22 JUDGE LUTON: All right. Like Tuesday afternoon?

23 MR. BERFIELD: That would be fine.

24 MR. KRAUS: That would be fine.

25 JUDGE LUTON: At say 1:00 in the afternoon on

1 Tuesday we'll come back here and I'll give you my ruling on
2 this question or whatever it is anymore. It sprawls and falls
3 apart on me the more, the more I sit here. And then it will
4 be -- well, it will affect the witnesses that the sides are
5 going to call and they're just going to have to find a way to,
6 to call them and all that. But ultimately, you know, if I've
7 got to move the hearing date I'll move the hearing date.
8 There's nothing sacrosanct about it, quite frankly.

9 MR. KRAUS: Well, Your Honor --

10 JUDGE LUTON: Meantime -- yes.

11 MR. KRAUS: Your Honor, we have -- we will -- if the
12 hearing is going to be moved it's --

13 JUDGE LUTON: I haven't said that yet. I don't want
14 to move it. I want to stay with it, but I don't want to
15 require superhuman efforts on the part of anybody here.

16 MR. KRAUS: We have more than a few people whose
17 schedules are deeply affected by the current date.

18 JUDGE LUTON: That's always the case. You're right.
19 Your right, and they've been planning their lives around the
20 hearing at a particular time, one that's been out there for a
21 long time.

22 MR. KRAUS: That's right, Your Honor.

23 JUDGE LUTON: I'll try everything I can to stay with
24 that date, but if I have to change it I will.

25 MR. KRAUS: Of course.

1 JUDGE LUTON: Now, let's consider some of these
2 exhibits which have nothing to do with Liz Randolph. Are
3 there any --

4 MR. KRAUS: I don't know that there are any.

5 JUDGE LUTON: Are there any?

6 MR. KRAUS: I don't know that there are.

7 MR. MILLER: Well, I think there might be, Your
8 Honor.

9 JUDGE LUTON: Yes.

10 MR. MILLER: I could point you to a few. Would that
11 be useful?

12 JUDGE LUTON: I think so, yeah. I hope so.

13 MR. MILLER: Allegheny Exhibit No. 5, pages 2 and 3,
14 deals with a John and Barbara Knezovich's view that a skit
15 involving toe sucking was lacking in taste and that not only
16 was some of WBZZ's programming tasteless, so is a lot of the
17 other stuff on the public airwaves. And that, for instance,
18 Quinn and Banana should stop doing what they're doing. Now,
19 even should the Liz Randolph matter have some relevance here,
20 this --

21 JUDGE LUTON: This kind of letter does not.

22 MR. MILLER: This kind of letter doesn't. Not only
23 is it irrelevant, it's not sworn. It's just generally
24 irrelevant, immaterial and incompetent.

25 JUDGE LUTON: Many of these seem to be complaints

1 --

2 MR. KRAUS: Your Honor, none of them are sworn.

3 JUDGE LUTON: -- expressions of dislike for the
4 station or some of its programming.

5 MR. KRAUS: Yeah.

6 JUDGE LUTON: I'm not --

7 MR. KRAUS: But more importantly, Your Honor, none
8 of them are sworn and we don't know if any of these people
9 really said this.

10 JUDGE LUTON: Well, even if they did, I'm just going
11 past that for the moment. I understand. That's a legitimate
12 concern that you have and should have. But going beyond that
13 for the moment, I'm just expressing my view that there's a lot
14 of people who, who would prefer to listen to other stations.
15 So what? In a Commission proceeding, is my question, so what?
16 The Commission doesn't care.

17 MR. MILLER: There's an attempt at a blasphemy issue
18 at page 6 in reference to the swimsuit edition of the Koran by
19 someone who was offended by that, Judge.

20 JUDGE LUTON: They all seem to be the same --

21 MR. BERFIELD: Could I ask --

22 JUDGE LUTON: -- type here and I don't understand
23 why we're expected to consider them. Mr. Berfield, what have
24 we got here?

25 MR. BERFIELD: Well, we have here the public

1 speaking, Your Honor. I mean, we're trying the renewal
2 expectancy. They've run on their record. I mean, are we only
3 going to look at the, the part of the record that they want to
4 present or are we entitled to challenge? We didn't write
5 these letters. These are members of the --

6 JUDGE LUTON: What aspect of that record do we look
7 at? I think from the licensee's point of view it's
8 permissible to show -- attempt to show letters from members of
9 the public indicating a responsiveness to community needs and
10 concerns. These letter really, the ones we're talking about
11 now, seem to me to really be a compilation in general, which
12 isn't gripes, just speaking that way, not the same thing.

13 MR. KRAUS: And, Your Honor, if Mr. Berfield is
14 going out to the community and talk to Katub M. Saifee, M.D.
15 and said Katub, do you really -- did you write this letter,
16 were you really concerned about the blasphemy in a comment,
17 would you like to go before the FCC as a witness and explain
18 your concerns, that's another matter. Then I think we would
19 have -- fairly have that before us for consideration, but that
20 isn't what he's done at all. He's taken, he's taken a letter
21 that we don't know whether it's genuine --

22 MR. BERFIELD: It's in our files.

23 MR. KRAUS: It's in our file, but it doesn't mean
24 that the signature's genuine. I could have written this
25 letter. There's no way to know that I didn't. And so we have

1 two problems, one of which is at least as important as the
2 other, which is the form of proper presentation of evidence
3 has not been followed here. It's perfectly right that Mr.
4 Berfield have an opportunity to attack our record. It's
5 perfectly correct that he have an opportunity to look at the
6 public file, look at these letters and interview people, as
7 apparently he has done in part, to see if he can find somebody
8 who's willing to be a witness or to testify about the
9 station's performance so that we can test them. But to give
10 us a letter which is, which is not sworn to, which we have no
11 basis for knowing it is in fact genuine or is today the
12 opinion of the person who wrote the letter, and ask us to
13 consider something which in any event is irrelevant. Whether
14 language has been blasphemous or not is simply not something
15 which is, is of concern to this Commission. I think it's
16 clearly wrong and I don't think detracts in any way, shape or
17 form from his ability to attack the record of the station
18 properly if he wants to do that. He just hasn't done it
19 right.

20 MR. ZAUNER: Or on the right basis.

21 MR. BERFIELD: Well, Your Honor, the bulk of these
22 letters were filed at the FCC. They're from the FCC complaint
23 files or the files of the station, which they're supposed to
24 maintain their public files. Many of them carry the FCC
25 stamp. They're all, I think, addressed either to the

1 Commission or copied to the Commission. If they wish to call
2 some of these people for, for questioning in Pittsburgh,
3 they're perfectly willing to do so and if the person didn't
4 show up, then they could move, they could move to strike it,
5 but I think just to --

6 JUDGE LUTON: But does -- the Commission stamp and
7 all that, that only shows that the letters were received by
8 the Commission, but then the question is what does it mean?

9 MR. BERFIELD: Well, I think that's a more
10 substantial question. I agree. And I don't want to belabor
11 the point, but -- I mean, if not -- I mean, they may be --
12 they are complaints. That's quite true. But they're -- in
13 many cases they're quite specific complaints and, for example,
14 the first one, the letter of John and Barbara Knezovich, is
15 quite concerned about the programming and its impact on, on
16 children. And we have another exhibit that they submitted
17 that they have a target area of young people and certain
18 people are lauding, lauding their efforts with young people
19 and here, it seems to me, we're entitled to present a
20 counterpoint. They can certainly call these people for, for
21 questioning in Pittsburgh but, I mean, I think the subject
22 matter of their information is, is germane.

23 MR. MILLER: It's all entertainment programming,
24 Your Honor.

25 JUDGE LUTON: Yes, it is.

1 MR. MILLER: And God forbid if the Commission gets
2 into the business of deciding in a renewal application for a
3 television station that carries Golden Girls, Night Court and
4 Murphy Brown who look into the propriety of Murphy Brown and
5 Night Court and Golden Girls in passing on the renewal
6 expectancy. It's -- Allegheny is asking for an impossible
7 extension of the Commission's legitimate concerns.

8 JUDGE LUTON: I agree and I'm going to put a stop to
9 the talk about it and play apart from the problems raised by
10 Mr. Kraus, which are significant, namely that the most concern
11 of these letters is that they, some of them anyway, were
12 received by the Commission. Authenticity I think is Mr.
13 Kraus' point, one of them, but he also made the point, as you
14 did, Mr. Miller, that these letters would take the Commission
15 off into directions which it has made clear time and time
16 again it does not care to go, namely getting itself involved
17 in judgments about whether something is tasteless, crude, or
18 whatever some of these characterizations may be. To me the
19 letters only show listener dissatisfaction with certain
20 entertainment programming. It's not really a Commission
21 matter. I don't think it says anything about the quality of
22 the programming. I would expect that if BZZ were inclined to
23 do so it too could go out and find a bunch of people who would
24 write letters complimenting Quinn and Banana --

25 MR. MILLER: Your Honor, the public file --

1 JUDGE LUTON: -- and saying good things about, about
2 how much people enjoy programming and that kind of thing.
3 This is not the kind of thing this Commission, as I view the
4 Commission, really can concern itself with. I do believe it's
5 the kind of thing that the Commission certainly does not
6 concern itself with, so I'm not going to accept any of those
7 letters, and the ones we're talking about are -- which ones
8 are we talking about?

9 MR. MILLER: That was Exhibit 5, Your Honor.

10 JUDGE LUTON: 5?

11 MR. MILLER: Exhibit 6 --

12 MR. KRAUS: It goes to all of them, Exhibit 5, Your
13 Honor.

14 JUDGE LUTON: Let me just be clear here. I'm going
15 to do them one at a time. I'm going to reject 5.

16 (The document previously marked as
17 Allegheny Exhibit No. 5 was hereby
18 rejected.)

19 JUDGE LUTON: That's all the letters. Then I'm
20 going to go down to 6. You say it goes to all of what, Mr.
21 Kraus? All of the remaining exhibits, the ones that we
22 haven't considered?

23 MR. KRAUS: No, Your Honor. No, no. I think that
24 on 6 it -- the same ruling would apply because again --

25 JUDGE LUTON: Well, let me hear first -- before I

1 | hear objections let me hear what is sought to be done here.

2 | MR. BERFIELD: Well, they -- this again is in the
3 | context of, of renewal expectancy and they have put in
4 | substantial information as to their ascertainment efforts, and
5 | I assume by ascertainment they mean they are going to attempt
6 | to show that they're sensitive and responsive to the needs and
7 | concerns of the, of the listening public. And what Exhibit --
8 | I think Exhibit -- what Exhibit 6 is intending to do, these
9 | were a number of letters that were apparently written to the
10 | station and Mr. Meyer responded, and I will have questions for
11 | Mr. Meyer as to the nature of his response to these letters in
12 | the context of ascertainment and responding to listener
13 | concerns and interests.

14 | MR. MILLER: Your Honor?

15 | MR. BERFIELD: My point being if they're entitled to
16 | show their ascertainment effort, and I don't deny that they
17 | are, and I didn't object to their exhibits, I'm entitled it
18 | seems to me to show what happens when people write in
19 | complaints and what kind of response, then I think it's very,
20 | very perfunctory that they receive from the General Manager of
21 | the station --

22 | JUDGE LUTON: Well --

23 | MR. BERFIELD: -- and asking some questions about
24 | that on cross-examination.

25 | JUDGE LUTON: Okay. That's different than not so